IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10070 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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VALLABHBHAI LAKHMANBHAI

Versus

STATE OF GUJARAT,

Appearance:

1. Special Civil Application No. 10070 of 2000

MR VK JOSHI for Petitioner No. 1

Ms. Pandit, AGP for Respondent No. 1

RULE SERVED for Respondent No. 2-4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 30/08/2001

ORAL JUDGEMENT

Heard learned advocate Mr. V.K.Joshi for the petitioner and Ms. Pandit, the learned AGP appearing for the respondents. Brief facts of the present petition are

that the petitioner Shri Vallabhbhai Lakhmanbhai Patel has purchased 13 Acres and 7 Gunthas of the non-irrigated land from Bharwad Daya Veja, of new tenure by registered sale deed dated 2nd June, 1994. For granting the permission of sale transaction, the Collector, Jamnagar fixed the market price of the land in question at Rs.57,491.00 and 50% of the premium was paid by the original land owner. Thereafter, on 29th November, 1995, the petitioner made an application for NA Permission to the Collector, Jamnagar. Thereafter, on 30th January, 1996, the petitioner again made representation to the Collector, Jamnagar for granting NA Permission on the basis of the plans and layout submitted by the petitioner alongwith his original application. On 12th February, 1996, the Collector, Jamnagar passed an order granting NA Permission in favour of the petitioner and fixed the market price of the land in question at Rs.3,44,250.00 and also directed the petitioner to pay 2,40,235.00 as a premium which amount was paid by the petitioner on 9th February, 1997. Thereafter, on 20th June, 1996, the Collector, Jamnagar has taken the order in suo-motu proceedings and cancelled the order passed by him on 12th February, 1996 granting NA Permission in favour of the petitioner and permitted the petitioner to file the revision application before the Additional Secretary (Arbitration). On 2nd August, 1996, the petitioner filed revision application before the Additional Secretary (Arbitration) and challenged the order passed by the Collector on 20th June, 1996. After one year, the COllector, Jamnagar send records to the Additional Secretary. On 30th November, 1997, the Additional Secretary passed final order and quashed and set aside the order of the COllector dated 20th June, 1996 in suo-motu proceedings and further directed the COllector, Jamnagar to obtain necessary permission from the Revenue Department of the State Government after submitting necessary proposal and to pass necessary orders in pursuance to the permission that may be obtained from the State Government. In view of the orders passed by the revisional authority on 30th November, 1997, the Collector, Jamnagar addressed one letter in January, 2000 to the Deputy Secretary, Revenue Department and pointed out that the market price of the said land has been fixed by the Committee in its meeting held on 10th February, 1999 at Rs.115.00 per square meter and, therefore, total amount would come to Rs. 61,31,510.00 and considering that the petitioner is having the possession of the land in question for a period less than twenty years, therefore, he has to pay 50% amount of premium which comes to Rs.49,05,256.00 out of which the amount of Rs.2,12,230.00 which the petitioner has already deposited

has been deducted and net amount comes to Rs.46,93,026.00 and, therefore, same is required to be paid by the petitioner. Though the petitioner requested the Collector, Jamnagar to consider his case for market price prevailing in the year 1996 on the basis of the application submitted by him in the year 1996 and also requested the COllector to consider his case on the basis of the fact that the earlier order of the Collector dated 12th February, 1996 has been set aside only on technical ground because of the administrative mistake was committed by the Collector in not obtaining the prior permission from the Revenue Department before passing the order granting NA Permission. Such request has not been considered by the COllector, Jamnagar and thereafter on 22nd February, 2000, the Collector, Jamnagar informed to petitioner to give consent for the market price fixed by the committee in the meeting held on 10th February, 1999 and the total amount is required to be deposited by the petitioner as a premium of Rs. 46,93,026.00. Further, it was pointed out by the Collector, Jamnagar that if the consent is not given by the petitioner within seven days, then, the NA Permission granted in favour of the petitioner will be cancelled. Similarly, the Collector, Jamnagar has addressed one letter on the same terms to the petitioner dated 20th March, 2000 and pointed out that if the consent is not given by the petitioner to deposit the market price which has been fixed by the Committee in the meeting held on 10th February, 1999, then, the NA Permission granted in favour of the petitioner shall stand cancelled. Therefore, the petitioner has filed the present petition challenging the said two communications passed by the concerned authority having adverse effect on the legal right of the petitioner.

I have heard the learned advocate for the petitioner and Ms. Pandit, the learned AGP for the respondents. Mr. Joshi, learned advocate for the petitioner has pointed out that on 29th November, 1995, an application was submitted by the petitioner for NA Permission to the COllector, Jamnagar and, thereafter, second application was submitted to the Collector, Jamnagar on 30th January, 1996 to consider his case for NA Permission. Thereafter, the Collector, Jamnagar considered the case of the petitioner for NA Permission after taking into account the recommendation made by the Mamlatdar (Rural), Jamnagar dated 25th December, 1994 and 2nd February, 1995 and the Government Resolution dated 16th March, 1982 issued by the Revenue Department. The Collector, Jamnagar has considered the market price of Rs.7110.00 per one acre and, thereafter, this market

price was reconsidered by the COllector in the same year and has come to the conclusion in considering the application which was submitted by the petitioner dated 30th January, 1996 and the market price of Rs.30,000.00 per acre was fixed for 13 acre 7 gunthas of the land, total of which would come to Rs.3,44,250.00 out of which 70 per cent was required to be paid by the petitioner as a premium which comes to Rs.2,40,925.00 and the amount of Rs. 28,745.00 which has been deposited by the petitioner has been deducted and the net amount of Rs.2,12,230.00 was payable and the petitioner was informed by the COllector for depositing the said amount within twenty one days and thereafter, the remaining amount was deposited by the petitioner on 9th February, 1997 as per the letter written to the petitioner dated 6th February, 1996. The petitioner has produced on record copy of the receipt whereby the amount has been deposited by the petitioner on 9th February, 1997. These orders dated 12th February, 1996 have been set aside by the Collector, by order dated dated 20th June, 1996 while exercising suo motu powers which order dated 20th June, 1996 was challenged by the petitioner before the revisional authority as stated earlier wherein the revisional authority has set aside the order dated 20th June, 1996 and the Collector was directed to obtain necessary permission from the revenue department for granting NA Permission in favour of the petitioner. Thus, in view of the orders passed by the revisional authority in the revision application, the State Government has ultimately fixed the price of the land in question at Rs.61,31,570.00 on the basis of the Government Resolution dated 15th January, 1998. On the basis of the said resolution dated 15.1.1998, District Level Valuation Committee has been constituted for fixing the market price of the land in question and meeting of the said committee was held on 10th February, 1999 wherein the market price of the land in question was fixed at Rs.115.00 per sq. mtrs. The petitioner has objected to this redetermination of the market price on the basis of the Government Resolution dated 15.1.1998. According to the learned advocate Mr. Joshi, the Collector has committed an error in not obtaining the prior permission of the revenue department before passing the order dated 12th February, 1996 and on that ground the revision application was allowed by setting aside the order dated 12th February, 1996 by directing the Collector to pass orders granting NA Permission after obtaining the prior permission from the Revenue Department and in view of such specific orders passed by the Revisional authority in the revision application, it was not open for the Collector to redetermine the issue of market price since

it was already determined. Further, according to Mr. Joshi, even if the Collector reconsiders the said issue while considering application for NA Permission, then, the COllector ought to have considered the market price prevailing at the relevant time when the application was moved in the year 1996. According to him, the Government Resolution dated 15.1.1998 is not having the retrospective effect. Therefore, according to him, redetermination of the market price by the State Government while granting NA Permission in favour of the petitioner is unjust, arbitrary and without giving any opportunity to the petitioner and, therefore, this decision of the State Government is illegal and without jurisdiction.

Ms. Pandit, the learned AGP appearing for the respondent authorities has submitted that the State Government has considered the Government Resolution dated 15.1.1998 and the District Level Valuation Committee was constituted and in the meeting of the said committee, price was fixed and, therefore, the price which has been fixed by the committee is required to be deposited by the petitioner if he wants the NA Permission from the Government and there is no illegality in the redetermination of the price of the land in question and, therefore, the order passed by the State Government in favour of the petitioner for granting NA Permission is proper and the petitioner is required to deposit the price as has been fixed by the committee in its meeting held on 10th February, 1999 at Rs.115.00 per square meter total of which would come to Rs.61,31,570 and, therefore, according to Ms. Pandit, there is no illegality committed by the respondent authorities and, therefore, this petition is required to be dismissed.

I have considered the submissions made by the learned advocates for the parties. It is necessary to note that the District Collector Jamnagar, while passing the order dated 12th February, 1996, has taken into account the market price of the land in question at Rs.3000.00 per acre and accordingly, the price has been fixed for granting the NA Permission in favour of the petitioner. The only mistake committed by the COllector, Jamnagar was that the prior permission from the revenue department has not been obtained as per the Government Resolution dated 16th March, 1982 because power is with the Government to grant the NA Permission if the area of the land in question is within the limits of fifteen km of the city having population of more than one lakh. The Collector has committed mistake in not obtaining such prior permission and, therefore, the lacuna which has

remained in the order of the collector dated 12th February, 1996 was required to be removed and rectified by the concerned collector by submitting proposal to the State Government. The order dated 12th February, 1996 was set aside by the revisional authority on that ground alone by order dated 30th November, 1997 and thereafter the Collector has approached the State Government for necessary permission after the period of three years and, thereafter the State Government while granting NA Permission has considered the market price prevailing in the year 1999. While considering the proposal of the Collector Jamnagar for granting NA Permission to the petitioner, the State Government ought to have appreciated that the application was made by the petitioner on 29th November, 1995 and 2nd application on 30th January, 1996 and it ought to have appreciated that the order of the Collector dated 12th February, 1996 was set aside in the revision application only for want of prior permission from the State Government and the State Government ought to have appreciated that the Government Resolution dated 15th January, 1998 is having the prospective effect and not the retrospective effect. While granting the NA Permission in favour of the petitioner, the State Government ought to have considered the market price prevailing in the year 1996 on the basis of which the earlier order dated 12th February, 1996 was passed which was set aside by the revisional authority vide order dated 30th November, 1997 for want of prior permission from the State Government. Thereafter, the Collector, Jamnagar has approached the State Government for necessary permission after a period of three years. Therefore, according to my opinion, redetermination of the market price of the land in question by the State Government while granting NA Permission is totally without jurisdiction. The Government ought to have taken into account the date on which the application was made by the petitioner for NA Permission on 29th November, 1995 and 30th January, 1996 on the basis of which earlier order was passed by the Collector, Jamnagar on 12th February, 1996 considering the market price prevailing at the relevant time and accordingly, the premium has been fixed by the COllector Jamnagar. The order dated 12th February, 1996 was set aside by the same collector while exercising suo motu powers by order dated 20th June, 1996 and that order dated 20th June, 1996 was set aside by the revisional authority on the ground that the Collector was required to obtain prior permission from the State Government by order dated 30th November, 1997. Under the guise of this direction issued by the Revisional authority in its order dated 30th November, 1997, the State Government has redetermined the premium considering

the market price prevailing in the year 1999. According to my opinion, such action of redetermination of the price is without jurisdiction and the Government Resolution dated 15th January, 1998 is not applicable to the facts of the present case. Therefore, the market price fixed by the Committee in its meeting dated 10th February, 1999 as per the Government Resolution dated 15th January, 1998 is not applicable to the facts of the present case and, therefore, according to my opinion, the price which has been determined by the State Government in favour of the petitioner while granting NA Permission is required to be set aside with a direction to the State Government to reconsider the case of the petitioner on the basis of the fact that the application of the petitioner for NA permission is dated 29th November, 1995 and second application dated 30th January, 1996 and whatever market price of the land in question prevailed at the relevant point of time is required to be taken into account by the State Government while granting NA permission in favour of the petitioner.

This petition is accordingly allowed. The order-communication dated 22nd February, 2000 and 28th March, 2000 are hereby quashed and set aside and it is directed to the respondent No.1 to reconsider the case of the petitioner for grant of NA Permission on the basis of the Government Resolution dated 16th March, 1982 and to consider the market price which was prevailing in the year 1996 in respect of the land in question and to fix the market price of the land in question accordingly and to grant the NA Permission in favour of the petitioner with necessary directions within three months from the date of receipt of certified copy of this order. It is also directed to the respondent No.1 to give adjustment of the amount and deduct the amount deposited by the petitioner while granting NA Permission by considering the market price prevailing in the year 1996.Rule is made absolute accordingly with no order as to costs.

30.8.2001. (H.K. Rathod,J.)

Vyas